

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: April 2, 2003

To: The Commission
(Meeting of April 3, 2003)

From: Alan LoFaso
Office of Governmental Affairs (OGA) — Sacramento

Subject: **SB 67 (Bowen) Renewables Portfolios Standard**

As introduced January 17, 2003

Legislative Subcommittee Recommendation: SUPPORT

Summary: This bill would amend the California Renewables Portfolio Standard (RPS) Program established under SB 1078, authorizing the CPUC to require an electrical corporation to procure renewable generation sources if the electrical corporation negotiates reasonable terms without impairing the restoration of its credit worthiness.

Analysis: This bill would allow the CPUC to impose the new statutory RPS requirement in a more time-efficient and direct manner by authorizing the commission to impose the RPS requirement prior to an electrical corporation's obtaining investment grade ratings from two credit agencies, provided the procurement would not impair the utilities' ability to become creditworthy.

This bill would provide, as a condition precedent to commission authority to impose RPS procurement responsibilities, either (1) that an electrical corporation (EC) obtain investment grade ratings from two major credit rating agencies or (2) that all of the following conditions are met:

1. the EC is able to procure the renewable resources on reasonable terms;
2. the resources can be financed if necessary; and
3. the procurement would not impair the utilities' ability to become creditworthy.

This alternative creditworthiness requirement would allow the CPUC to enforce the RPS requirement by directing procurement of renewable power with reasonable terms where project developers are willing to sign contracts with the ECs regardless of their credit ratings (as occurred under transitional procurement, where developers did not require the credit-backing of DWR).

Moreover, this bill requires that new RPS procurement may not inhibit a utility's return to an investment-grade credit rating. Therefore, the alternative condition would not authorize specific RPS requirements that would prevent ECs from becoming credit worthy.

Amending the RPS statute to authorize the CPUC to impose the RPS standard as it is being implemented now would be a superior option to requiring renewable procurement requirements via other statutes.

Under direction to the CPUC under PU Code 701.3 (see below), the CPUC could hold the utilities accountable to renewable procurement goals by obliging utilities to procure for renewable power with reasonable terms of contracts.

However, many of specific requirements and mitigations provided for in the RPS may not be applicable to non-creditworthy ECs (PG&E, SCE) if renewable procurement requirements rely on Section 701.3. Not applying the comprehensive RPS scheme in statute could potentially provide for uneven rules between creditworthy and non-creditworthy ECs. This would seem particularly problematic because many specifics provisions in the statute address concerns of non-creditworthy utilities (e.g., mitigations when the RPS requires procurement of power at above market costs).

Alternatively, the commission could wait to impose the RPS requirement when either PG&E or SCE receive an investment grade credit rating by two credit agencies. However, this delay would likely inhibit the CPUC's renewable power procurement policy goals, generally, and inhibit implementation of SB 1078 as the delay might allow these utilities to fall short of their short-term (2004) and long-term (2017) renewable resources targets.

SUGGESTED AMENDMENTS

The bill leaves ambiguous which entity should determine whether procurement of renewable power would impair the electrical corporation's ability to be creditworthy. The language should be amended to clarify that it is the CPUC that would make that determination. The bill language should be amended as follows:

“(ii) The electrical corporation is able to procure eligible renewable energy resources on reasonable terms, those resources can be financed if necessary, and the procurement will not impair the restoration of an electrical corporation's creditworthiness as judged by the commission.” (proposed P.U. Code Sec. 399.14(a)(1)(A)(ii), page 2, lines 20-23.)

LEGISLATIVE HISTORY

Existing law, PU Code 701.3, requires the CPUC to direct a portion of an electrical corporation's (EC) generation portfolio to be reserved for renewable resources with no specific creditworthiness requirements until certain conditions are met.

Under this law, the CPUC required PG&E, SCE, and SDG&E to procure at least 1% of their portfolio with renewable resources for 2003 (See D. 02-08-071).

Existing law, Chapter 516, Statutes of 2002 (SB 1078), mandates a renewable procurement standard (RPS). Specifically, the law requires that retail electricity sellers increase the renewable content of their energy deliveries by an average of one percent per year over a baseline level existing on January 1, 2003, as determined by the CPUC. The requirement of an annual increment continues until renewable energy comprises 20 percent of the energy portfolio, a target that must be achieved by December 31, 2017.

SB 1078 prescribes a comprehensive scheme for RPS implementation including, among many others, provisions for:

- a) A definition of eligible renewable resources;
- b) Determination of market prices for renewable resources to identify above market costs;
- c) A process for rank ordering and selection of least-cost and best-fit renewable resources to comply with RPS obligations;
- d) Flexible rules for compliance with the RPS;
- e) Setting of annual procurement targets; and
- f) Standard terms and condition for all electrical corporations for contracting for eligible renewable resources.

SB 1078 also proscribes the CPUC from requiring an electrical corporation to procure renewable resources in fulfillment of the RPS until that EC has been deemed creditworthy by an investment grade rating as determined by at least two major credit agencies.

This creditworthiness condition is limited by the following language: “The creditworthiness determination required by this paragraph shall apply only to the requirements established pursuant to this article. The requirements for an electrical corporation pursuant to Section 454.5 shall be governed by that section.” (emphasis added) (PU Code 399.14(a)(1).) P.U. Code section 454.5 was added by both AB 57 and SB 1976 of 2002.

Existing law, Chapter 835, Statutes of 2002, (AB 57) and Chapter 850, Statutes of 2002 (SB 1976), both add P.U. Code Section 454.5, which outlines requirements for electrical corporations resuming procurement generally. This statute requires, among other things, that electrical corporations include within their procurement plans a showing that their plan will fulfill unmet requirements of P.U. Code Section 701.3 (see above) to procure renewable resources with a goal of an additional goal of 1 percent per year, until a 20 percent renewable resource portfolio is achieved.

This section contains a proviso that sufficient funds must be made available under P.U. Code sec. 399.6 (governing state programs to subsidize renewable energy resources) to cover the above market costs for new renewable energy resources.

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BILL LANGUAGE:

BILL NUMBER: SB 67 INTRODUCED
BILL TEXT

INTRODUCED BY Senator Bowen

JANUARY 17, 2003

An act to amend Section 399.14 of the Public Utilities Code,
relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 67, as introduced, Bowen. Energy: California Renewables Portfolio Standard Program.

Existing law establishes the California Renewables Portfolio Standard Program. The program requires that a retail seller of electricity, including electrical corporations, community choice aggregators, and electric service providers, purchase a specified minimum percentage of electricity generated by eligible renewable energy resources, as defined, in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year (renewables portfolio standard). Under existing law, the Public Utilities Commission may not require an electrical corporation to conduct procurement to fulfill the renewables portfolio standard until it is deemed creditworthy by the commission.

Existing law requires the commission to direct electrical corporations to prepare, within 90 days of being deemed creditworthy, and to review and update as necessary, renewable energy procurement plans that are sufficient to satisfy its obligations under the renewables portfolio standard. Existing law requires the commission to allow an electrical corporation to recover, in rates, electricity procurement and administrative costs associated with long-term contracts reasonably incurred consistent with a renewable energy procurement plan approved by the commission.

This bill would instead require that the Public Utilities Commission not require an electrical corporation to conduct procurement to fulfill the renewables portfolio standard until the commission determines either that the electrical corporation has attained an investment grade credit rating or that the electrical corporation is able to procure eligible renewable energy resources on reasonable terms, those resources can be financed if necessary, and the procurement will not impair the restoration of an electrical corporation's creditworthiness. The bill would clarify that the provision allowing an electrical corporation to recover, in rates, electricity procurement and administrative costs associated with long-term contracts applies to contracts entered into pursuant to the California Renewables Portfolio Standard Program.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 399.14 of the Public Utilities Code is amended

to read:

399.14. (a) The commission shall direct each electrical corporation to prepare renewable energy procurement plans as described in paragraph (3) to satisfy its obligations under the renewables portfolio standard. To the extent feasible, this procurement plan shall be proposed, reviewed, and adopted by the commission as part of, and pursuant to, a general procurement plan process. The commission shall require each electrical corporation to review and update its renewable energy procurement plan as it determines to be necessary.

(1) (A) The commission shall not require an electrical corporation to conduct procurement to fulfill the renewables portfolio standard until ~~it is deemed creditworthy by the commission upon it having~~ the commission determines either of the following:

(i) The electrical corporation has attained an investment grade credit rating as determined by at least two major rating agencies. ~~Within~~

(ii) The electrical corporation is able to procure eligible renewable energy resources on reasonable terms, those resources can be financed if necessary, and the procurement will not impair the restoration of an electrical corporation's creditworthiness.

(B) Within 90 days of being deemed creditworthy as provided in subparagraph (A), an electrical corporation shall conduct solicitations to implement a renewable energy procurement plan. The creditworthiness determination required by this paragraph shall apply only to the requirements established pursuant to this article. The requirements established for an electrical corporation pursuant to Section 454.5 shall be governed by that section.

(2) Not later than six months after the effective date of this section, the commission shall adopt, by rule, for all electrical corporations, all of the following:

(A) A process for determining market prices pursuant to subdivision (c) of Section 399.15. The commission shall make specific determinations of market prices after the closing date of a competitive solicitation conducted by an electrical corporation for eligible renewable energy resources. In order to ensure that the market price established by the commission pursuant to subdivision (c) of Section 399.15 does not influence the amount of a bid submitted through the competitive solicitation in a manner that would increase the amount ratepayers are obligated to pay for renewable energy, and in order to ensure that the bid price does not influence the establishment of the market price, the electrical corporation shall not transmit or share the results of any competitive solicitation for eligible renewable energy resources until the commission has established market prices pursuant to subdivision (c) of Section 399.15.

(B) A process that provides criteria for the rank ordering and selection of least-cost and best-fit renewable resources to comply with the annual California Renewables Portfolio Standard Program obligations on a total cost basis. This process shall consider estimates of indirect costs associated with needed transmission investments and ongoing utility expenses resulting from integrating and operating eligible renewable energy resources.

(C) Flexible rules for compliance including, but not limited to, permitting electrical corporations to apply excess procurement in one year to subsequent years or inadequate procurement in one year to no more than the following three years.

(D) Standard terms and conditions to be used by all electrical corporations in contracting for eligible renewable energy resources,

including performance requirements for renewable generators.

(3) Consistent with the goal of procuring the least-cost and best-fit eligible renewable energy resources, the renewable energy procurement plan submitted by an electrical corporation shall include, but is not limited to, all of the following:

(A) An assessment of annual or multiyear portfolio supplies and demand to determine the optimal mix of renewable generation resources with deliverability characteristics that may include peaking, dispatchable, baseload, firm, and as-available capacity.

(B) Provisions for employing available compliance flexibility mechanisms established by the commission.

(C) A bid solicitation setting forth the need for renewable generation of each deliverability characteristic, required online dates, and locational preferences, if any.

(4) In soliciting and procuring eligible renewable energy resources, each electrical corporation shall offer contracts of no less than 10 years in duration, unless the commission approves of a contract of shorter duration.

(5) In soliciting and procuring eligible renewable energy resources, each electrical corporation may give preference to projects that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.

(b) The commission shall review and accept, modify, or reject each electrical corporation's renewable procurement plan 90 days prior to the commencement of renewable procurement pursuant to this article by the electrical corporation.

(c) The commission shall review the results of a renewable energy resources solicitation submitted for approval by an electrical corporation and accept or reject proposed contracts with eligible renewable energy resources based on consistency with the approved renewable procurement plan. If the commission determines that the bid prices are elevated due to a lack of effective competition amongst the bidders, the commission shall direct the electrical corporation to renegotiate such contracts or conduct a new solicitation.

(d) If an electrical corporation fails to comply with a commission order adopting a renewable procurement plan, the commission shall exercise its authority pursuant to Section 2113 to require compliance.

(e) Upon application by an electrical corporation, the commission may authorize another entity to enter into contracts on behalf of customers of the electrical corporation for deliveries of eligible renewable energy resources to satisfy the annual portfolio standard obligations, subject to similar terms and conditions applicable to an electrical corporation. The commission shall allow the procurement entity to recover reasonable costs through retail rates subject to review and approval.

(f) Procurement and administrative costs associated with long-term contracts entered into by an electrical corporation for eligible renewable energy resources *pursuant to this article*, at or below the market price determined by the commission pursuant to subdivision (c) of Section 399.15, shall be deemed reasonable per se, and shall be recoverable in rates.

(g) For purposes of this article, "procure" means that a utility may acquire the renewable output of electric generation facilities that it owns or for which it has contracted. Nothing in this article is intended to imply that the purchase of electricity from third parties in a wholesale transaction is the preferred method of fulfilling a retail seller's obligation to comply with this article.

(h) Construction, alteration, demolition, installation, and repair work on an eligible renewable energy resource that receives production incentives or supplemental energy payments pursuant to Section 383.5, including, but not limited to, work performed to qualify, receive, or maintain production incentives or supplemental energy payments is "public works" for the purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.